

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ZAREH VARDANYAN,

Defendant and Appellant.

B215132

(Los Angeles County
Super. Ct. No. GA061545)

APPEAL from an order of the Superior Court of Los Angeles County,
Teri Schwartz, Judge. Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

On August 12, 2005, Zareh Vardanyan was charged by information with one count of stalking (Pen. Code, § 646.9, subd. (b)),¹ two counts of attempted kidnapping (§§ 207, subd. (a), 664), two counts of disobeying a restraining order (§ 166, subd. (a)(4)), and one count of residential burglary (§ 459).

Appearing with private counsel on November 29, 2005, Vardanyan entered an open plea of no contest to all counts and agreed to be referred to the Department of Corrections for a 90-day diagnostic study. At the time Vardanyan entered his plea, he was advised by the trial court of his constitutional rights and the nature and consequences of his plea. Vardanyan stated he understood and waived his constitutional rights, acknowledged he understood the consequences of his plea and admissions and accepted the terms of the negotiated agreement. In particular, the trial court advised Vardanyan, “If you are not a citizen of this country, your pleas today will be used to cause your deportation; exclusion from admission; and denial of naturalization. You will be deported. [¶] Do you understand?” Vardanyan responded, “Yes.”

Defense counsel joined in the waivers of Vardanyan’s constitutional rights and concurred in the pleas. Defense counsel stipulated to, and the court found, a factual basis for the pleas.

The matter was continued for sentencing.

At the April 11, 2006 sentencing hearing, the trial court stated it had reviewed the diagnostic study and then heard argument from counsel and a statement from Vardanyan. The court sentenced Vardanyan to a two-year state prison term, consisting of concurrent terms of two years for stalking and residential burglary and concurrent terms of 18 months for the two counts of attempted kidnapping. The court ordered Vardanyan to pay a \$20 court security fee, and a \$200 restitution fine. A parole revocation fine was imposed and suspended pursuant to section 1202.45. Vardanyan was awarded a total of

¹ Statutory references are to the Penal Code.

378 days presentence credit for both cases (329 actual days and 49 days of conduct credit).

On January 29, 2009, Vardanyan filed a motion to vacate the judgment on the ground he had not been adequately advised of the immigration consequences of his plea. His motion was heard and denied on February 11, 2009. Vardanyan filed a notice of appeal from the court's order denying the motion.

We appointed counsel to represent Vardanyan on appeal. After an examination of the record, counsel filed an opening brief in which no issues were raised. On September 23, 2009, we advised Vardanyan he had 30 days within which to personally submit any contentions or issues he wished us to consider. On October 23, 2009, Vardanyan filed a hand printed supplemental brief, in which he claimed the plea hearing transcript inaccurately reflected he was properly advised of the immigration consequences of his plea as required by Penal Code section 1016.5, subdivision (a) (§ 1016.5(a)). He also maintains defense counsel was ineffective in failing to advise him of the immigration consequences of his plea, of the nature of the charges against him and of his possible defenses. Attached to Vardanyan supplemental brief are copies of various documents reflecting his educational background and employment history.

We have examined the entire record and are satisfied Vardanyan's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

We see no reason to question the accuracy of the record which plainly belies Vardanyan's claim the court failed to properly advise him pursuant to § 1016.5(a). To the extent Vardanyan's motion to vacate the judgment was based on grounds other than § 1016.5(a), including ineffective assistance of counsel, the denial of his motion is not appealable. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 981-983.) The proper

vehicle for Vardanyan to challenge the denial of his motion is a petition for writ of habeas corpus. (*In re Resendiz* (2001) 25 Cal.4th 230, 237, fn. 2; *Gallardo*, at p. 983.)

The order is affirmed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.